



28 February 2019

Financial System Division
The Treasury
Langton Crescent
PARKES ACT 2600

Via email: ICO@treasury.gov.au

Dear Sir/Madam

Initial Coin Offerings

Chartered Accountants Australia and New Zealand welcomes the opportunity to provide feedback to the Treasury on the *Initial Coin Offerings (ICO) Issues Paper* ("the Issues Paper"). We have focused our feedback on key areas where we consider we can add the most value. Appendix A provides our detailed submission and Appendix B provides more information about Chartered Accountants Australia and New Zealand (CA ANZ).

Key points

- We are concerned that ICOs are being offered to unsophisticated investors and there is a lack of recourse available to Australian investors. Further, we don't consider the opportunities of an ICO for an investor currently outweigh the risks involved.
- We recommend that industry, including regulators, consider whether external assurance may assist in creating greater confidence within the ICO market.
- We consider it premature to discuss the need for special tax treatment of ICOs and recommend the Australian Taxation Office (ATO) be given an opportunity to collaborate with the ICO industry to develop guidance.
- We suggest targeted ICO awareness raising and education is utilised to support the current regulatory frameworks in Australia.

Should you have any queries concerning the matters discussed above or wish to discuss them in further detail, please contact Karen McWilliams via email at karen.mcwilliams@charteredaccountantsanz.com or phone (612) 8078 5451.

Yours sincerely,

Simon Grant FCA
Group Executive
Advocacy & Professional Standing
Chartered Accountants Australia and
New Zealand

Karen McWilliams FCA
Business Reform Leader
Advocacy & Professional Standing
Chartered Accountants Australia and
New Zealand

Appendix A

General Comments

ICOs are speculative, high-risk investments. We are concerned that, in practice an overwhelming majority of ICOs have been created with a lack of viable or explainable business models; complex and obfuscated white papers; and a lack of disclosures, particularly around use of funds. Further, we are particularly concerned that ICOs are being offered to unsophisticated investors and there is a lack of recourse available for Australian investors if losses are made.

We recognise that ICOs are an emerging area in Australia. We are concerned that current regulatory frameworks are not well placed to adequately address rapidly changing areas such as ICOs. We suggest that Treasury consider how the existing frameworks can be strengthened to keep up to date and if this can realistically be achieved for ICOs.

We also recommend that the current regulatory frameworks are supported with targeted awareness raising and education to ensure that potential ICO investors have access to resources which clearly articulate the risks involved in an ICO.

Opportunities and Risks

The feedback we have received from some of our members has mainly highlighted the risks to investors and the community. They have expressed concern around the complex nature of ICOs, noting even the most sophisticated investors find it difficult to fully understand some of them. In addition to their complex nature, ICOs are also highly susceptible to market manipulation, in particular with the types of marketing and promotion schemes used, for example bounty schemes.

We note the commentary in the Issues Paper around the opportunities for investors. However, we do not consider these opportunities currently outweigh the risks involved and are certainly not distinguishable from the opportunities Crowd Sourced Equity Funding (CSEF) can provide an investor. We recommend that Treasury undertake further analysis on local and overseas markets to really determine where the opportunities of ICOs lie for investors.

Regulatory Frameworks in Australia

We note, as outlined in the Issues Paper, ICOs either fall under Australian Consumer Law or the *Corporations Act 2001* (Corporations Act) depending on the characteristics of the offering. However, due to the speculative nature of ICOs and the ability for characteristics to change over time, in practice ICO issuers have the ability to structure digital tokens of an ICO in a way that would involve the least amount of regulation. Further, as highlighted in the paper, it will be difficult to regulate ICOs, especially across jurisdictions.

As mentioned above, targeted awareness raising and education for investors in ICOs (of both risks and opportunities) could support the current regulatory frameworks in place. As outlined in the Issues Paper, ASIC currently has a suite of regulatory guides (RGs) to provide comprehensive guidance to an ICO issuer. However we note there appears to be limited guidance aimed at ICO investors. We recommend comprehensive guidance is developed for investors, including research from overseas markets and possibly short videos, to assist in providing clarity and educating the investor market.

We recognise that some ICOs may be genuine initiatives utilising distributed ledger technology (DLT) in order to start up their businesses. We recommend that industry, including regulators, consider whether similar requirements that are in place for CSEF such as the standardised disclosure document (before and after raisings), enforceable limits on the maximum amount of funds raised, caps on investments from individuals and external assurance on disclosures may assist in creating greater confidence within the ICO market. External assurance on whitepapers and other investment prospectuses will add trust and credibility to assist in making informed investment decisions. We do recognise that with the absence of intermediaries in the ICO market that some of these recommendations may be difficult to implement.

Tax Treatment of ICOs

We note that tax law is often criticised for being complicated. However, part of that complexity can arise from the existence of special provisions to deal with particular matters or circumstances. The questions pertaining to tax in the Issues Paper are directed at trying to determine whether special circumstances exist for a case for special tax treatment for ICOs.

We agree with the Issues Paper's analysis that:

- “The current tax treatment of ICOs follows from the attributes of the tokens that are issued. This tax treatment is consistent with taxation of other commercial transactions, financial instruments and capital raising mechanisms, where the tax implications flow from the underlying nature of the rights and obligations attached to the instrument, and not the form in which the instrument is issued.”
- “Given the variety in how these arrangements can be structured, there is no single manner in which ICO proceeds are taxed”

Given the current uncertainties regarding the definition, forms, and non-tax regulatory treatment of ICOs as well as the evolving nature of ICOs, we consider it is premature to discuss the need for special tax treatment.

Rather than propose to change the tax law for a rapidly evolving new business method, the Australian Taxation Office (ATO) should be given an opportunity to work closely with those in the ICO industry to develop guidance regarding the treatment of ICOs. The ATO has successfully implemented such a strategy regarding crypto currency, which at times also briefly mentions ICOs¹.

Such an approach may result in subsequent legislative change once there is greater clarity regarding the operation and regulation of ICOs. For example, the GST treatment of bitcoin changed from 1 July 2017, due to legislation which stated that digital currency will have the equivalent treatment to money and, in certain circumstances, supplies of digital currency will be treated as financial supplies.

A complimentary approach would be for ICO promoters to obtain class rulings from the ATO about a particular ICO. To minimise the time and cost involved in evaluating and approving a class ruling under this approach, we recommend the ATO establish a small, specialised team to deal with such applications and maybe a regulatory sandbox, where ideas are informally discussed before formal class ruling applications are made.

¹ Refer Australian Tax Office [GST and digital currency](#), [Tax treatment of cryptocurrency, specifically bitcoin](#), [Information for digital currency exchange providers](#)

Appendix B

About Chartered Accountants Australia and New Zealand

Chartered Accountants Australia and New Zealand is a professional body comprised of over 120,000 diverse, talented and financially astute members who utilise their skills every day to make a difference for businesses the world over.

Members are known for their professional integrity, principled judgment, financial discipline and a forward-looking approach to business which contributes to the prosperity of our nations.

We focus on the education and lifelong learning of our members, and engage in advocacy and thought leadership in areas of public interest that impact the economy and domestic and international markets.

We are a member of the International Federation of Accountants, and are connected globally through the 800,000-strong Global Accounting Alliance and Chartered Accountants Worldwide which brings together leading Institutes in Australia, England and Wales, Ireland, New Zealand, Scotland and South Africa to support and promote over 320,000 Chartered Accountants in more than 180 countries.

We also have a strategic alliance with the Association of Chartered Certified Accountants. The alliance represents 788,000 current and next generation professional accountants across 181 countries and is one of the largest accounting alliances in the world providing the full range of accounting qualifications to students and business.